LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
AUG 31 1964
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 271

ELLEN WEBSTER, CLARENCE WEBSTER, MABEL LYONS, ANNA FRAZIER, AARON FRAZIER, STANLEY B. WINTERS and HELEN WINTERS, *Petitioners*,

v.

CITY OF NEWARK, a Municipal Corporation, CENTRAL PLANNING BOARD OF THE CITY OF NEWARK, and HOUSING AUTHORITY OF THE CITY OF NEWARK, *Respondents*.

On Petition for Writ of Certiorari to the Supreme Court of the State of New Jersey

BRIEF FOR RESPONDENTS IN OPPOSITION

DAVID L. KROOTH
NORMAN S. ALTMAN
VICTOR A. ALTMAN
Counsel for Respondents,
1001 15th Street, N.W.
Washington 5, D. C.

NORMAN N. SCHIFF
City Hall, Newark, New Jersey

AUGUSTINE J. KELLY
57 Sussex Avenue
Newark, New Jersey
Of Counsel

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

INDEX

	Page
Opinions Below	1
Jurisdiction	2
Questions Presented	2
Statutes and Constitutional Provisions Involved	3
Statement	4
Argument	7
Introductory Remarks	7
A. No Substantial Federal Questions Are Raised by Petitioners	7
B. Due Process Does Not Require that a Blight Hearing Be a Trial-Type Adversary Proceeding	9
C. Blight Hearing Was Conducted in Keeping with State Statute	12
1. Trial-Type adversary proceeding is not required by Statute	12
2. The determination of blight was made in compliance with the requisite statutory criteria	13
Conclusion	16

CITATIONS

CASES:

Bauman v. *Ross*, 167 U.S. 548 (1897) 9, 10, 11
Berman v. *Parker*, 348 U.S. 26 (1954) 8, 12
Bragg v. *Weaver*, 251 U.S. 57 (1919) 9
City of Chicago v. *R. Zwick Co.*, 27 Ill.2d 128, 188 N.E. 2d 489 (1963) 7
Currin v. *Wallace*, 306 U.S. 1 (1939) 11
Danforth v. *United States*, 308 U.S. 271 (1939) 10, 11

Page

Donnelly v. *District of Columbia Redevelopment Land Agency*, 269 F.2d 546 (C.A.D.C. 1959), cert. denied, 361 U.S. 949 (1960) 8

Fellom v. *Redevelopment Agency of City and County of San Francisco*, 157 Cal. App.2d 243, 320 P.2d 884, app. dismissed for want of a substantial federal question, 358 U.S. 56 (1958) 8

Gonzalez v. *City of Chicago*, 27 Ill.2d 128, 188 N.E.2d 489, app. dismissed, 373 U.S. 542 (1963) 7, 9

Griggs v. *Borough of Princeton*, 33 N.J. 207, 162 A.2d 862 (1960) 13

Hannah v. *Larche*, 363 U.S. 420 (1960) 11, 12

Harrison-Halsted Community Group, Inc. v. *Housing and Home Finance Agency*, 310 F.2d 99 (7th Cir. 1962), cert. denied, 373 U.S. 914 (1963) 7, 9

Herbert v. *Louisiana*, 272 U.S. 312 (1926) 13

Kaskel v. *Impellitteri*, 306 N.Y. 73, 115 N.E.2d 659, rehearing denied, 306 N.Y. 609, 115 N.E.2d 832 (1953), cert. denied, 347 U.S. 934 (1954) 8

Norwegian Nitrogen Products Co. v. *United States*, 288 U.S. 294 (1933) 11

Redevelopment Agency of City and County of San Francisco v. *Hayes*, 122 Cal. App.2d 777, 266 P.2d 105, cert. denied, 348 U.S. 897 (1954) 8

Rindge Co. v. *Los Angeles*, 262 U.S. 700 (1923) 9

Robinette v. *Chicago Land Clearance Commission*, 115 F.Supp. 669 (N.D. Ill. 1951), motion for leave to file petition for writ of mandamus denied, 342 U.S. 940 (1952) 9

Shoemaker v. *United States*, 147 U.S. 282 (1893) .. 9

Sorbino v. *City of New Brunswick*, 43 N.J. Super. 554, 129 A.2d 473 (1957) 10

Stahl v. *Board of Finance of the City of Paterson*, 62 N.J. Super. 562, 163 A.2d 396 (1960), aff'd 69 N.J. Super. 242, 174 A.2d 238 (1961) 13

Webster v. *City of Newark*, 41 N.J. 599, 198 A.2d 445 (1964) 2

Wilson v. *Long Branch*, 27 N.J. 360, 142 A.2d 837, cert. denied, 358 U.S. 878 (1958) 9, 10, 12, 13

Page

UNITED STATES CONSTITUTION:

Amendment XIV 2

FEDERAL STATUTES:

22 U.S.C. 1257 (3) 2
78 Stat. 252-53 (11 U.S. Code Cong. & Ad. News 1603-04 (July 20, 1964)) 15

New Jersey Constitution, Article 1, Par. 5 15

REVISED STATUTES OF NEW JERSEY:

R.S. 18:25-12 15
R.S. 40:55-21.1 *et seq.* 4, 6, 13
R.S. 40:55-21.10 10
R.S. 55:14A-31 *et seq.* 4
R.S. 55:14A-32 ..... 13, 14
R.S. 55:14E-3 ..... 3, 10
R.S. 55:14E-5 ..... 3, 10
R.S. 55:14E-6 10

MISCELLANEOUS:

Executive Order No. 11063, 27 Fed. Reg. 11527 (1962) 15

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 271

ELLEN WEBSTER, CLARENCE WEBSTER, MABEL LYONS, ANNA FRAZIER, AARON FRAZIER, STANLEY B. WINTERS and HELEN WINTERS, *Petitioners,*

v.

CITY OF NEWARK, a Municipal Corporation, CENTRAL PLANNING BOARD OF THE CITY OF NEWARK, and HOUSING AUTHORITY OF THE CITY OF NEWARK, *Respondents.*

On Petition for Writ of Certiorari to the Supreme Court of the State of New Jersey

BRIEF FOR RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The determination of the Central Planning Board of the City of Newark (Pet. App. 58B)[1] and the blight

[1] "Pet. App." references are to the Appendix to the Petition for a Writ of Certiorari; "R" references are to the Plaintiffs' Appendix in the Supreme Court of New Jersey which has been filed in this Court as a part of the record; "Pet." references are to the Petition for a Writ of Certiorari.

statement in support thereof (Pet. App. 60B) are unreported.

The resolution of the City of Newark approving the determination of the Central Planning Board (Pet. App. 57B) is unreported.

The opinion letter of the Superior Court of New Jersey, Law Division (Pet. App. 53B) is unreported.

The opinion of the Superior Court of New Jersey, Appellate Division (R. 492a) is unreported.

The Order of the Supreme Court of New Jersey dismissing Petitioners' appeal (Pet. App. 35B) is unreported. The Order of the Supreme Court of New Jersey denying Petitioners' Petition for Certification (Pet. App. 36B) is reported at 41 N.J. 599, 198 A.2d 445.

JURISDICTION

The judgment of the Superior Court of New Jersey, Appellate Division, was entered on January 10, 1964. (R. 492a). A Petition for Certification to the Supreme Court of New Jersey was denied on March 9, 1964. (Pet. App. 36B). A motion to dismiss the appeal to the Supreme Court of New Jersey was granted on April 13, 1964. (Pet. App. 35B). The jurisdiction of this Court is invoked under 22 U.S.C. 1257 (3) (*sic*) and the 14th Amendment of the United States Constitution. (Pet. 2).

QUESTIONS PRESENTED

1. Whether the 14th Amendment requires in every case that a hearing for the determination of blight be a trial-type adversary proceeding.

2. Where the Courts of New Jersey have rejected Petitioners' construction of the statutes in question, will this Court review the construction accorded the statutes by the Courts of New Jersey?

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

The pertinent Constitutional and statutory provisions involved (with the exception of R.S. 55:14E-3 and 5, set forth below) are set forth in Petitioners' Appendix 22A-34A.

55:14E-3. Application for approval of rehabilitation project

"Any insurance company, bank or banking institution, trust company, savings bank or association, building and loan association, or savings and loan association, or any other corporation organized, or authorized to do business, under any law of this State, acting alone or conjointly, may present to the governing body of any municipality of this State an application for approval of a project for the clearance, replanning, development or redevelopment, at the expense of the applicant, of all or part of a blighted area in such municipality. . . ."

55:14E-5. Contract between applicant and municipality: bond

". . . the governing body shall examine into such application and shall determine whether or not the project therein proposed is in the public interest and necessary for public use and welfare within the purposes of this act. The governing body may suggest changes or alterations to the proposal as submitted in the application which, if acceptable to the applicant, shall be incorporated in and become part of such application. If the governing body shall determine, by resolution, that the undertaking is in the public interest and welfare, and that the governing body is satisfied

as to the financial ability of the applicant to complete the same, then the said governing body may enter into a contract with the applicant, by which the municipality agrees (1) to acquire at its expense, by purchase, gift, devise or otherwise or by the exercise of eminent domain, all of the property included within the said tract of land, and (2) to lease the same to the applicant. . . ."

STATEMENT

The present litigation presents questions concerning the nature of a blight hearing conducted by the Central Planning Board of the City of Newark, New Jersey.

On June 7, 1961, the Municipal Council of the City of Newark (hereinafter referred to as "Council") authorized the Central Planning Board of the City of Newark (hereinafter referred to as "Planning Board") to make an investigation and hold a public hearing to determine if the area in question is a blighted area, "all as required by Chapter 187 of the Laws of 1949 of New Jersey (R.S. 40:55-21.1 et seq.) as amended, and by Chapter 211 of the Laws of 1956 of New Jersey (R.S. 55:14A-31 et seq.)" (R. 493a).

In their "Statement" Petitioners incorrectly state that the Council, by their Resolution of June 7, 1961, "designated the area be appropriated for urban renewal as a light industrial area . . . ." (Pet. 4, 5). The Resolution is entitled:

> "RESOLUTION DESIGNATING AND AUTHORIZING THE CENTRAL PLANNING BOARD TO MAKE AN INVESTIGATION AND HOLD PUBLIC HEARING TO DETERMINE WHETHER THE LIGHT INDUSTRIAL PROJECT AREA AS DESIGNATED IN THIS RESOLUTION IS A BLIGHTED AREA. (PROJECT N.J. R-32)." (R. 19a).

The Planning Board, after giving due notice, (R. 67a), held the public hearing on June 29, 1961:

> "The planning board had before it for study not only the views and exhibits presented at the aforesaid public hearing, but it also had the benefit of the city's Master Plan of 1947, which had marked this area for rehabilitation and clearance, the 'Existing Conditions Survey,' the Jacobs report, the Third and Final Report on Newark prepared by the staff of the Newark Planning Board, maps and other data. In addition, the planning board made a personal inspection of the area." (Opinion of Appellate Division, Superior Court, R. 494a).

Petitioners attended the hearing and had a full opportunity to participate. (R. 493a). They were told at the hearing by the Chairman of the Planning Board, that the Planning Board would consider any evidence presented by them up to the time it reached its determination. (R. 45a, 391a). They submitted no evidence to the Planning Board either at the hearing or later. (R. 497a).

At the hearing, they asked to examine certain records made during the investigation. This request was denied on the ground that the records (principally survey cards) contained, *inter alia*, confidential information. (R. 494a).

The Petitioners assert that they asked for an adjournment and that their request for an adjournment was denied (Pet. 5); Respondents find no entry in the record so showing.

The Planning Board determined that the area was a blighted area and sent its determination to the Council for action. The Council, on November 28, 1961, approved this determination. (R. 54a).

The Petitioners filed suit in the Superior Court, Law Division, on December 12, 1961, to set aside the Planning Board's determination of blight and the Council's approval thereof. (R. 495a). The court allowed Petitioners to examine the evidence received by the Planning Board, including all the evidence theretofore denied them. (R. 63a). Petitioners inspected the evidence and prepared their own survey and submitted it in evidence. (R. 179a). The trial judge examined all evidence submitted to him, (R. 63a) and in company of all counsel, studied the area personally and found that "the overwhelming impression is one of hopelessly irreversible deterioration and dilapidation." (R. 64a).

The trial judge (Superior Court, Law Division) upheld the actions of the Planning Board and the Council declaring the area in question a blighted area within the meaning of R.S. 40:55-21.1 *et seq.* (R. 65a).

Petitioners appealed to the Appellate Division, Superior Court, on October 25, 1962. (R. 66a). The Appellate Division affirmed, holding that the Law Division had correctly found that Petitioners had received a proper hearing; the Planning Board's determination and that of the Council were not *ultra vires;* and the determinations were not arbitrary or capricious and were supported by substantial evidence. The Appellate Division also dismissed the charge that the determinations were discriminatory against Negroes, stating that the charge was "barren of any merit herein." (R. 505a).

Thereafter, Petitioners' appeal to the Supreme Court of New Jersey was dismissed, (Pet. App. 35B) and a Petition for Certification was denied. (Pet. App. 36B).

ARGUMENT

INTRODUCTORY REMARKS

Apart from the fact that the decision below is correct, numerous reasons exist why the Petition for Writ of Certiorari should be denied.

This case presents no novel questions of great importance. Rather, in the main, only questions concerning the construction to be accorded State statutes are presented. There is no conflict among the decisions of the Courts of New Jersey on the issues in the case. And, the decisions below are in accord with the decisions which courts of other jurisdictions have made on similar questions. All have uniformly rejected the contentions here made. *Harrison-Halsted Community Group, Inc.* v. *Housing and Home Finance Agency*, 310 F.2d 99 (7th Cir.), cert. denied, 373 U.S. 914; *Gonzalez* v. *City of Chicago*, 27 Ill. 2d 128, 188 N.E. 2d 489, appeal dismissed, 373 U.S. 542; *City of Chicago* v. *R. Zwick Co.*, 27 Ill. 2d 128, 188 N.E. 2d 489, appeal dismissed, 373 U.S. 542.

A. No Substantial Federal Questions Are Raised by Petitioners

Each of Petitioners' three questions depends on a point of State law which is contrary to their contentions. Consequently, the Federal questions which Petitioners seek to raise are unsubstantial.

In their first question, Petitioners argue that there is an unconstitutional taking because the blight declaration requires the municipality to "acquire" the blighted property. (Pet. 3, Q. 1). The Superior Court, in accord with overwhelming authority, correctly held that the declaration of blight need not be followed by a taking of property. (R. 504a). Since

there has been no taking, nor is one required, any question of an unconstitutional taking is never reached.

The second question states that a blight proceeding is a step to the acquisition of federal funds; hence, since federal funds are involved, a federal question is raised if the blight proceeding is faulty. (Pet. 3, Q. 2). Assuming, *arguendo*, that such involvement could raise a federal question, the flaw here is that there is no contractual obligation of the Federal Government to provide any funds, even though a blight hearing has been held. As the Superior Court said, the blight proceeding is not a determination of future use. (R. 504a).

The last question argues that there is discrimination against Negroes under the redevelopment plan. (Pet. 3, Q. 3). The basic fact is that no plan for the taking of property in the blighted area has yet been approved, and the New Jersey Courts correctly ruled that it is entirely premature to look into the question of possible future discrimination in a future plan. (R. 505a).

In essence, Petitioners are questioning the constitutionality of the redevelopment statutes. It is well settled that no substantial Federal question exists as to the constitutionality of such statutes. *Berman* v. *Parker*, 348 U.S. 26; *Donnelly* v. *District of Columbia Redevelopment Land Agency*, 269 F.2d 546 (C.A. D.C.), cert. denied, 361 U.S. 949; *Fellom* v. *Redevelopment Agency of City and County of San Francisco*, 157 Cal. App. 2d 243, 320 P.2d 884, appeal dismissed for want of a substantial federal question, 358 U.S. 56; *Redevelopment Agency of City and County of San Francisco* v. *Hayes*, 122 Cal. App. 2d 777, 266 P.2d 105, cert. denied, 348 U.S. 897; *Kaskel* v. *Impellitteri*,

306 N.Y. 73, 115 N.E. 2d 659, rehearing denied, 306 N.Y. 609, 115 N.E. 2d 832, cert. denied, 347 U.S. 934.

The claim of Petitioners that a blight hearing must be a trial-type adversary proceeding, is unsubstantial and has on other occasions been before the Court on petition for review. *Robinette* v. *Chicago Land Clearance Commission*, 115 F. Supp. 669 (N.D. Ill.), motion for leave to file petition for writ of mandamus denied, 342 U.S. 940; *Wilson* v. *Long Branch*, 27 N.J. 360, 142 A.2d 837, cert. denied, 358 U.S. 873; *Harrison-Halsted Community Group, Inc.* v. *Housing and Home Finance Agency*, 310 F.2d 99 (7th Cir.), cert. denied, 373 U.S. 914; *Gonzalez* v. *City of Chicago*, 27 Ill. 2d 128, 188 N.E. 2d 489, appeal dismissed, 373 U.S. 542. See also *Rindge Co.* v. *Los Angeles*, 262 U.S. 700; *Bragg* v. *Weaver*, 251 U.S. 57.

B. Due Process Does Not Require That a Hearing for the Determination of Blight be a Trial-Type Adversary Proceeding

Many cases decided by this Court demonstrate that the blight hearing here in question is merely an investigative function having no effect on property rights or other legal rights. Accordingly, the trial-type adversary hearing is not required.

A clear-cut distinction exists between the action of a Sovereign in deciding which lands may be taken and the actual taking of those lands. *Shoemaker* v. *United States*, 147 U.S. 282, 321. Merely deciding which lands might be taken affects no property rights. *Bauman* v. *Ross*, 167 U.S. 548 (the filing of a map formulating a general plan for the extension of highways in the District of Columbia was not a taking). This is true because the filing "does not restrict in any way the use

or improvement of lands by their owners before the commencement of proceedings for condemnation . . . nor does it limit the damages to be awarded in such proceedings." *Bauman* v. *Ross*, 167 U.S. at 597. Moreover, the Sovereign is not obligated by the blight hearing to take the land and "may discontinue or abandon his effort." *Danforth* v. *United States*, 308 U.S. 271, 284.

In the instant case, the applicable statute specifically provides that "the municipality may, but shall not be required to, acquire the real property within the area . . . ." declared blighted. R.S. 40:55-21.10. See also *Wilson* v. *Long Branch, supra*, and *Sorbino* v. *City of New Brunswick*, 43 N.J. Super. 554, 129 A.2d 473 (rejecting the claim that a municipality must acquire property declared blighted).

Plaintiffs incorrectly assert (Pet. 17) that the "Blight Act of Title 55" requires a taking of property by a municipality under certain conditions, thus indicating their contention that the declaration of blight must be followed by a taking of the property. Title 55 does not support their contention. By Title 55, Sections 14E-3, 14E-5 and 14E-6, a municipality is authorized to contract with a private person to redevelop blighted property, and to implement that contract the municipality may obligate itself to condemn such property.

The instant case showed no contractual connection between the declaration of blight and any subsequent action to be taken by the municipality. The City of Newark had no contract with any private persons. Instead, it was attempting to fulfill the requirements for

obtaining Federal aid in the redevelopment, under the provisions of Title 55.[2]

The declaration of blight is distinctly separated from any taking of property in the blighted area. Petitioners may speculate that the declaration may result in a loss of property values, but a taking can not be predicated on such speculation. In fact, land prices in blighted areas may rise in anticipation of redevelopment.

The Court has held that there is no taking even though "A reduction or increase in the value may occur by reason of legislation for or the beginning or completion of a project" and that "Such changes in value are incidents of ownership. . . [and] cannot be considered as a taking in the constitutional sense." *Danforth* v. *United States*, 308 U.S. at 285. See also *Currin* v. *Wallace*, 306 U.S. 1 (holding, *inter alia*, that a prospective loss of business was too speculative to amount to the denial of a property right).

What we have here is simply a fact-finding investigation being conducted by a municipality. In such cases the traditional form of adversary trial-type hearing is not required. *Norwegian Nitrogen Products Co.* v. *United States*, 288 U.S. 294; *Hannah* v. *Larche*, 363 U.S. 420 (where the Court held that when Governmental action consists merely of a general fact-finding

[2] Assuming, *arguendo*, that condemnation must follow a declaration of blight where the municipality has entered into a contract for redevelopment, this would not transform the blight hearing into a taking. The determination of lands to be taken, and the actual taking thereof, remain separate. *Bauman* v. *Ross*, 167 U.S. 548 (where the statute in question required the acquisition of certain lands included in the maps recorded, but this did not convert the recording into a taking).

investigation, no legal rights are impinged and said, at 442, that "it is not necessary that the full panoply of Judicial procedures be used.").

Sound reasons exist for not trammeling a municipality while engaged in an investigative function. For, as the Court has pointed out, Governmental bodies should not be hampered in their fact-finding investigations lest "the investigative process . . . be completely disrupted . . . ." *Hannah* v. *Larche*, 363 U.S. at 443.

No property rights or other legal rights being affected by a blight hearing or the ensuing declaration of blight, Petitioners' demand for a trial-type adversary proceeding must be rejected.[3]

C. Blight Hearing Was Conducted in Keeping With State Statute

1. Trial-type Adversary Proceeding Is Not Required by Statute.

All hearings to determine whether or not an area is blighted must be conducted pursuant to the terms of the New Jersey "Blight Areas" Act, Title 40. The Housing Authorities Law, which is a part of Title 55, makes no provision for any blight hearings independent of those contained in Title 40.

Title 55 provides that the blight hearing "shall be held in accordance with the provisions of Chapter One

[3] This Court's ruling in *Berman* v. *Parker*, 348 U.S. 26, also seems to dispose of Petitioners' claims. In upholding the District of Columbia Redevelopment Law, which provided only for a general legislative type hearing, the Court emphasized the primary legislative responsibility in the area, the broad discretion of the administrative authorities and the very limited scope of judicial review. The legislation before the Court in *Berman* is quite similar in scope to the New Jersey legislation in question. *Wilson* v. *Long Branch*, 142 A. 2d at 843.

Hundred Eighty-Seven of the laws of One Thousand Nine Hundred and Forty-Nine." The reference is to Title 40.[4]

The courts of New Jersey have unequivocally ruled that a blight hearing pursuant to Title 40, is not a trial-type adversary proceeding. *Wilson* v. *Long Branch,* 27 N.J. at 380, 142 A.2d at 851; *Griggs* v. *Borough of Princeton,* 33 N.J. 207, 162 A.2d 862. See also *Stahl* v. *Paterson Board of Finance,* 62 N.J. Super. 562, 163 A.2d 396, *aff'd,* 69 N.J. Super. 242, 174 A.2d 238.

Even assuming, *arguendo,* that the blight hearing is under Title 55, the Appellate Division, Superior Court, has ruled that Title 55 similarly gives no right to a trial-type adversary proceeding. (R. 496a).

It is well settled that the meaning accorded a State statute by the courts of that jurisdiction is conclusive. *Herbert* v. *Louisiana,* 272 U.S. 312, 316. Accordingly, no Federal question is here presented.

2. The Determination of Blight was made in Compliance with the Requisite Statutory Criteria.

The definition of blight under R.S. 40:55-21.1 sets up the criteria for finding whether blight is present. Exactly the same criteria are set forth in R.S. 55:14A-32 and the Appellate Division so held:

> "In substance, therefore, exactly the same conditions which must be found under the one must be found under the other statute before the board

[4] Petitioners have incorrectly referred to "the Blight Act of Title 55" (Pet. 11 and 17), and the "Title 55 blight proceeding" (Pet. 20). There is no Blight Act of Title 55 nor is there any such "blight proceeding" thereunder.

> can legally make a finding that the area is blighted. The recital in N.J.S.A. 55:14A-32 that the area must be found to be 'a social or economic liability' to the municipality is nothing more than a general conclusion flowing automatically from the finding of the existence of the statutorily required conditions evidentiary thereof. The 'blight statement' accompanying the board's resolution makes it abundantly clear that the conditions found to exist made the area a social and economic liability to the city." (R. 500a-01a).

This is solely a question of construction of a State statute and the decision is conclusive. Hence, there is no merit to the argument that the wrong statutory criteria were applied. Further, the New Jersey courts have clearly held that these correct criteria were properly applied in the instant case.[5]

Petitioners groundlessly allege that the blight hearing was held so as to avoid the anti-discrimination provisions of Title 55 (Pet. App. 29A), and that "Negro clearance" was being attempted. (Pet. 21). The simple answer is that the hearing notice itself showed that the blight hearing was held under both Title 55 and Title 40—automatically incorporating the anti-discrimination provision of Title 55. (R. 67a). Additionally, there are other anti-discrimination provisions of the State of New Jersey which apply to pre-

---

[5] Petitioners make an unsubstantial claim that final approval by the Council of the Planning Board's determination of blight, was not given within thirty days. Suffice it to say that both the Superior Court, Law Division (R. 121a) and the Appellate Division (R. 503a) held that the statutory period was directive and not mandatory and the Supreme Court of New Jersey in effect approved such conclusions by (1) denying certification and (2) dismissing Petitioners' appeal.

vent any such alleged abuses, regardless of whether the proceeding is under Title 40 or 55.[6] Further, the Appellate Division reviewed Petitioners' allegations and stated that they were "barren of any merit herein." (R. 505a).

We respectfully ask the Court to consider that the municipality is striving earnestly and fairly to remedy a festering condition long prevalent. The technical objections of the Petititoners are, as the Appellate Division wrote, far outweighed by the "plethora of evidence" (R. 498a) supporting the finding of blight and the "hopelessly irreversible deterioration and dilapidation" of the blighted area. (R. 503a).

---

[6] New Jersey Constitution, Art. 1, Par. 5; R.S. 18:25-12. There is no merit in Petitioners' contention that Respondent chose a course of action designed to circumvent anti-discrimination provisions. Because Federal funds are here involved, discrimination against Negroes, or anyone else in this redevelopment, is also barred by the President's Executive Order on Equal Opportunity in Housing, Exe Order No. 11063, 27 Fed. Reg. 11527 (1962), and by the Civil Rights Act of 1964, Title VI, Sections 601-05, 78 Stat. 252-53 (11 U.S. Code Cong. & Ad. News 1603-04 (July 20, 1964)).

Additionally, the allegation is premature, since no urban renewal plan is presently before the Court. (R. 505a).

CONCLUSION

For the foregoing reasons, this Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

DAVID L. KROOTH
NORMAN S. ALTMAN
VICTOR A. ALTMAN
Counsel for Respondents,
1001 15th Street, N.W.
Washington 5, D. C.

NORMAN N. SCHIFF
City Hall, Newark, New Jersey

AUGUSTINE J. KELLY
57 Sussex Avenue
Newark, New Jersey

Of Counsel

August, 1964.